THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26747 OF 2006

Dated: 05-07-2007

Between :

Sri P. Kanaka Durga Raju … Petitioner

And

Authorised Officer, Punjab National Bank,
Zonal Office, 6-1-73, Saeed Plaza,
Lakdikapul, Hyderabad-500 044. … Respondent

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.26747 OF 2006

ORDER:

The petitioner herein was granted financial assistance vide sanction letter dated 25-4-2001 by the respondent Bank on depositing the title deeds of Flat No.202, S.R. Nagar, Hyderabad as security. The petitioner states that he has been paying the installments regularly as per the repayment schedule, however a demand notice dated 12-10-2004 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') was served on him calling upon him to pay Rs.6,02,098-49 ps allegedly due under the loan account. Since no such amounts were due from him, he met the officials of the respondent Bank personally and enquired about the demand notice. The officials while stating that the notice was issued by mistake assured him that no further action would be taken. However, surprisingly similar notice was issued again on 2-1-2006 demanding Rs.6,02,098-49 ps. In the circumstances, the petitioner got issued a legal notice dated 27-9-2006 calling upon the respondent to furnish the copies of the loan documents including the sanction letter, statement of accounts and etc. Pursuant thereto, the petitioner was furnished the statement of account dated 6-12-2006 in which the outstanding liability as on 9-9-2006 was shown as Rs.3,31,368-38 ps.

In the meanwhile, the respondent filed Crl.M.P.Nos.6360 of 2006 and 6399 of 2006 in the Court of the Chief Metropolitan

Magistrate, Hyderabad under Section 14 of the Act with a prayer to take physical possession of the secured asset. The said petitions were ordered on different dates appointing two different advocate-commissioners with a direction to take physical possession of the property and hand over the same to the respondent herein. On the basis of the warrant issued on 28-11-2006 in Crl.M.P.No.6399 of 2006 the respondent Bank has taken possession of the residential flat on 1-12-2006 through the advocate-commissioner.

Aggrieved by the said action of the respondent Bank, this writ petition was filed on 21-12-2006 seeking a declaration that the proceedings initiated by the respondent under Section 14 of the Act are null and void and consequently the warrants dated 18-10-2006 and 28-11-2006 are illegal and arbitrary.

In the counter-affidavit filed on behalf of the respondent Bank, it is stated that the petitioner was not regular in payment of installments and therefore the loan account was classified as Non-Performing Asset (NPA) on 30-06-2003. The allegation of the petitioner that the demand notice under Section 13 (2) of the Act was wrongly issued and that the respondent Bank had admitted that it was a mistake has been categorically denied. It is also stated that the demand notice under Section 13 (2) was actually issued on 10-9-2004 and the same was published in the newspapers on 2-1-2006 and therefore it is not correct to say two demand notices were issued. The circumstances under which the applications under Section 14 of the Act were made twice before the Chief Metropolitan Magistrate, Hyderabad were explained and it is stated that having noticed the mistake, the Senior Manager and the Authorised Officer of the respondent Bank had appeared before the Chief Metropolitan Magistrate on 14-10-2006 and tendered apology. Having considered the same, the Chief Metropolitan Magistrate directed to surrender the warrant obtained in Crl.M.P.No.6360 of 2006 and the same was already complied with by

the Bank. The other allegations made by the petitioner that the impugned proceedings by the respondent Bank were not in accordance with the statutory provisions have also been denied and it is stated that since the petitioner has committed default in payment of the loan installments the respondent has rightly proceeded under the Act against the secured assets for recovery of the amount due.

As could be seen from the material on record, the fact that the petitioner availed the financial assistance by the respondent Bank by creating mortgage on the house in question as security for the same is not in dispute. If that be so, the respondent Bank is entitled to invoke the provisions of the Act for recovery of the amounts due by proceeding against the securities by adopting any of the measures under Section 13 (4) of the Act.

The specific case of the respondent Bank is that the petitioner has committed default in repayment and consequently the loan account was declared as NPA long back in the year 2003. It is also their case that the demand notice under Section 13 (2) of the Act was issued informing the petitioner about the amounts due and giving him an opportunity to repay the same. Admittedly thereafter the possession notice under Section 13 (4) of the Act was issued and the possession of the property in question was already taken.

The learned Counsel for the respondent across the bar submitted that as a matter of fact the property was already sold in favour of a third party.

It is true that the petitioner while disputing his liability raised various objections in this writ petition contending that the impugned action of the respondent Bank is arbitrary, illegal and contrary to the provisions of the Act and the Rules made thereunder.

However, as rightly contended by the learned Counsel for the

respondent, Section 17 of the Act provides for an alternative remedy under which any person aggrieved by any of the measures under Section 13 (4) of the Act can make an application before the Debts Recovery Tribunal having jurisdiction in the matter. As a matter of fact, the petitioner has already filed such an application and the same is pending before the Debts Recovery Tribunal, Hyderabad which is competent to examine the facts and circumstances of the case and evidence produced by the parties and to record a finding whether the measures adopted by the respondent Bank under Sections 13 (4) & 14 of the Act for enforcement of the security are in accordance with the Act and the Rules made thereunder. It is also relevant to note that in case the Tribunal comes to a conclusion that the action of the secured creditor is not in accordance with the provisions of the Act and the Rules, the Tribunal is also competent to order restoration of possession of the secured assets to the borrower.

Since such proceedings are pending before the Tribunal, it is neither proper nor necessary for this Court to express any opinion on merits of the case.

It is also relevant to note that this Court, while directing notice before admission to the respondent Bank, by order dated 05-01-2007, while adjourning the matter to 18-1-2007 for counter of the respondent, directed that in the meanwhile the respondent shall not take any step for sale of the secured asset. However, a sale notice dated 2-3-2007 was published by the respondent Bank proposing to sell the flat in question on 13-3-2007. Questioning the said action of the respondent Bank, the petitioner filed W.P.No.4914 of 2007. This Court allowed the said writ petition and set aside the impugned sale notice holding that the same was not in conformity with the mandatory statutory provisions and granting liberty to the respondent Bank to proceed with the issuance of a proclamation of sale in accordance with the provisions of the Act and the Rules. Pursuant

thereto, a fresh sale notice was issued on 28-03-2007 proposing to sell the secured assets through public auction on 28-04-2007. Challenging the said sale notice, the petitioner filed S.A.No.46 of 2007 before the Debts Recovery Tribunal, Hyderabad under Section 17 of the Act with a prayer to set aside the proceedings initiated by the respondent Bank under Sections 13 & 14 of the Act. Pending the said proceedings, the petitioner sought interim stay of all further proceedings in pursuance of the sale notice dated 20-03-2007. The Debts Recovery Tribunal, Hyderabad by order dated 27-4-2007 declined to grant stay of sale observing that the petition cannot be considered unless the writ proceedings pending before this Court are withdrawn or leave to file proceedings in the Tribunal are obtained.

Having regard to the events that took place subsequent to the filing of this writ petition and particularly in view of the fact that the petitioner has already availed the alternative remedy and the proceeding are pending before the Debts Recovery Tribunal, Hyderabad, the learned Counsel for the respondent states that cause in this writ petition does not survive.

However, the learned Counsel for the petitioner vehemently contended that the entire action of the respondents being arbitrary, illegal and contrary to the provisions of the Act, it is a fit matter warranting interference by this Court in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The learned Counsel also contended that the pendency of the proceedings before the Tribunal cannot be a bar to grant the relief in this writ petition which was filed on an entirely different cause of action.

In support of his submissions, the learned Counsel for the petitioner has relied upon the decisions in NNM PVT. LTD. v. AUTHORIZED OFFICER, UBI, VISAKHAPATNAM[1], SUPER SHINE

ABRASIVES PVT. LTD. v. DEBTS RECOVERY TRIBUNAL[2] and ARUN KUMAR ARORA vs. UNION OF INDIA[3].

On a careful consideration of the entire material on record and having regard to the facts which are not in dispute, I am unable to agree with the submission of the learned Counsel for the petitioner that notwithstanding the pendency of the proceedings before the Debts Recovery Tribunal, the relief as prayed for in this writ petition can be granted.

As noticed above, what is challenged in this writ petition is the action initiated by the respondent Bank under Sections 13 (4) & 14 of the Act for taking possession of the secured asset. The very same action is the subject-matter of the proceedings initiated under Section 17 of the Act before the Tribunal. Hence, the matter does not deserve any further enquiry by this Court under Article 226 of the Constitution of India.

Accordingly, without expressing any opinion as to the rival claims made by either party, the Writ Petition is disposed of granting leave and liberty to the petitioner to prosecute the proceedings pending before the Tribunal by raising all the grounds as available under law including the grounds urged in this writ petition for redressal of his grievance. No costs.

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G. ROHINI, J.

Dt. 05–07-2007

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[1] 2005 (4) ALD 806 (DB)

[2] 2004 (3) ALD 183

[3] AIR 2006 PUNJAB & HARYANA 211